TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1934

No. 538

HARRY SEMLER, APPELLANT,

vs.

OREGON STATE BOARD OF DENTAL EXAMINERS, L. A. ROSENTHAL, LEONARD R. ANDREWS, ET AL., ETC.

APPEAL FROM THE SUPREME COURT OF THE STATE OF OREGON

FILED NOVEMBER 23, 1934.

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[fols. 1-3]

IN SUPREME COURT OF OREGON

HARRY SEMLER, Appellant,

vs.

OREGON STATE BOARD OF DENTAL EXAMINERS, L. A. ROSENTHAL, LEONARD R. ANDREWS, CARRIE H. JENKINS, ARTHUR F. WEEKS and M. C. HARRIS, Members of the State Board of Dental Examiners, Respondents

STIPULATION AS TO RECORD—Filed Oct. 25, 1934

It is hereby stipulated and agreed by and between the respective parties hereto that the record on appeal of the above entitled cause to the Supreme Court of the United States, to be made up by Mr. Arthur S. Benson, Clerk of the Supreme Court of the State of Oregon, shall consist of the following:

Complaint filed by Harry Semler, plaintiff, in the lower court;
Demurrer filed by defendants thereto;
Order entered by Judge Lusk sustaining defendants' demurrer; and Judge Lusk's opinion;
Opinion by the Supreme Court of Oregon on appeal;
Date petition for rehearing was filed;
Date petition for rehearing was denied;
Mandate of Supreme Court of Oregon.

Senn & Recken, of Attorneys for Appellant. Herzog, Kenin & Kenin, Attorneys for Respondents.
Dated October 24, 1934.

[File endorsement omitted.]

[fol. 4] IN CIRCUIT COURT OF MULTNOMAH COUNTY

HARRY SEMLER, Plaintiff

vs.

OREGON STATE BOARD OF DENTAL EXAMINERS, L. A. ROSENTHAL, LEONARD R. ANDREWS, CARRIE H. JENKINS, ARTHUR F. WEEKS and M. C. HARRIS, Members of the State Board of Dental Examiners, Defendants

COMPLAINT—Filed June 8, 1933

[File endorsement omitted]

Comes now the plaintiff above named, and, for cause of suit against the defendants above named, alleges:

I

That the defendant, Oregon State Board of Dental Examiners, was and is a board duly organized, existing and doing business under and by virtue of Section 68-1001, Oregon Code; That defendants above named, L. A. Rosenthal, Leonard R. Andrews, Carrie H. Jenkins, Arthur F. Weeks and M. C. Harris, were and now are duly appointed members of the said Oregon State Board of Dental Examiners, duly appointed by the Governor of the State of Oregon; that said defendants have duly qualified as members of said Board by taking and subscribing the oath in the manner provided for by Section 68-1002, Oregon Code, and have ever since been and now are the duly appointed, qualified and acting members of the said Oregon State Board of Dental Examiners.

II

That on the 6th day of June, 1918, the Oregon State Board of Dental Examiners duly issued to plaintiff, Harry Semler, a certificate which licensed the plaintiff, Harry Semler, to practice dentistry in the State of Oregon, which [fol. 5] certificate is now in full force and effect; that upon the issuance of said certificate the plaintiff entered upon the practice of dentistry in the State of Oregon and has ever since been continuously and is now engaged in the practice of dentistry under and by virtue of said certificate and

license; that prior to the issuance of said certificate the plaintiff duly complied with each and every of the requirements of the statutes of the State of Oregon governing the licensing of persons desiring to practice dentistry in the State of Oregon; that plaintiff has duly paid to the Secretary of State Board of Dental Examiners each year, from the issuance of the said license as aforesaid to the present time, the license fees at the time and in the manner provided by statute, and did receive each year the receipt or certificate of the Secretary of the State Board of Dental Examiners therefor, and did display each and every of said annual receipts or certificates in a conspicuous place in his office.

III

That from the time of the issuance of said certificate and license as aforesaid to the present time the plaintiff has practiced dentistry and maintained his office therefor in the County of Multnomah, State of Oregon; that plaintiff duly filed his certificate for record in the office of the County Clerk and Recorder of Multnomah County, Oregon, and said certificate was duly recorded.

IV

That there is now in full force and effect a statute in the State of Oregon, being Section 68-1013, Oregon Code, providing for the revocation or suspension of the license of dentists by the State Board of Dental Examiners, which statute is in words and figures as follows:

"Sec. 68-1013. Suspension and Revocation of License, Grounds, Hearing, Appeal. Any dentist may have his license revoked or suspended by the board of dental examiners for any of the following causes:

1. His conviction of a felony or misdemeanor involving moral turpitude, in which case the record of conviction or a certified copy thereof, certified by the clerk of the court or by the judge in whose court the conviction is had, shall be conclusive evidence.

[fol. 6] 2. For renting or loaning to any person his or her license or diploma to be used as a license or diploma of such person.

3. For unprofessional conduct, or for gross ignorance or inefficiency in his profession. Unprofessional conduct shall mean "employing what are known as 'cappers' or 'steerers' to obtain business; the obtaining of any fee by fraud or misrepresentation; wilfully betraying professional secrets; employing directly or indirectly any student or any suspended or unlicensed dentist to perform operations of any kind, or to treat lesions of the human teeth or jaws, or correct malimposed formations thereof; the advertisement of dental business or treatment or devices in which untruthful and misleading, improbable or impossible statements are made; or habitual intemperance or gross immorality. The proceedings under this section may be taken by the board from the matters within its knowledge, or may be taken upon the information of another; provided, however, that if the informant is a member of the board, the other members of said board shall constitute the board for the purpose of finding judgment of the accused. All accusations must be in writing, verified by some party familiar with the facts therein charged, and three copies thereof must be filed with the secretary of the board. Upon receiving the accusation the board shall, if it deem it sufficient, make an order setting the same for hearing, and requiring the accused to appear and answer it at said hearing, at a specified time and place, and the secretary shall cause a copy of the order and of the accusation to be served upon the accused at least ten (10) days before the day appointed in the order for said hearing. The accused must appear at the time appointed in the order and answer the charges and make his defense to the same, unless for sufficient cause the board assign another day for that purpose. If he do not appear the board may proceed and determine the accusation in his absence. If the accused plead guilty or refuse to answer the charges, or, upon the hearing thereof, the board shall find them or any of them true, it may proceed to a judgment of either revoking his license or suspending it. The board and the accused may have the benefit of counsel, and the board shall have power to administer oaths, take the depositions of witnesses in the manner provided by law in civil cases and compel them to attend before it in person the same as in civil cases, by subpoena issued over the signature of the secretary and the seal of the board and in the name of the people of the state of Oregon. Upon the revocation of any license the fact shall be noted upon the records of the board of dental examiners and the license

[fol. 7] shall be marked as canceled upon the date of its revocation. The secretary of the board shall, upon judgment of suspension or revocation being entered, transmit to the county recorded wherein the license of the licensee affected by such judgment is recorded a copy of such judgment order, certified to as such by said secretary of the board, for record, and the same shall be recorded in the same manner and in the same book wherein is kept the record of the certificate to practice dentistry. In case of the revocation of a license by the said board the licentiate whose license shall have been revoked by the said board shall have the right to appeal from said revocation within thirty days of the cancellation of said license. Such appeal shall be to the circuit court in and for the county in which was held the meeting of the board in which such revocation was made. In case a person desires to take such appeal, he shall serve, or cause to be served, upon the secretary of said board, a written notice of such appeal, which shall contain a statement of the grounds of such appeal, and shall file in the office of such secretary an appeal bond with good and sufficient surety, to be approved by such secretary, to the state of Oregon, conditioned for the speedy prosecution of such appeal and the payment of such costs as may be charged against him upon such appeal. Said secretary, within ten days after the service of said notice of appeal, and the filing and approval of said bond, shall transmit to the clerk of the circuit court, to which said appeal is taken, a certified copy under the seal of said board of accusations on which the revocation was based, the ground for appeal, together with the notice and bond of appeal. The clerk of such court shall thereupon docket such appeal causes and they shall be tried in all respects as ordinary civil actions and like proceedings shall be had thereon. Upon such appeal said cause shall be tried de novo. Either party may appeal from the judgment of this circuit court to the supreme court in the manner as civil actions may be appealed thereto. The judgment shall be stayed from the date of the approval of said bond until final determination of said appeal."

V

That at the 1933 session the Legislature of the State of Oregon passed a pretended law which was approved by the Governor on March 1, 1933, and filed in the office of the Secre-

tary of State on March 1, 1933, known as Chapter 166 of the Laws of 1933, pretending to amend the provisions of the aforesaid Section 68-1013, Oregon Code, which pretended law is in words and figures as follows:

[fol. 8] "Section 2. That section 68-1013, Oregon Code 1930, be and the same hereby is amended so as to read as follows:

Sec. 68-1013. Any dentist may have his license revoked or suspended by the board of dental examiners for any of the following causes:

1. His conviction of a felony or misdemeanor, involving moral turpitude, in which case the record of conviction or a certified copy thereof, certified by the clerk of the court or by the judge in whose court the conviction is had, shall be conclusive evidence.

2. For renting or loaning to any person his or her license or diploma to be used as a license or diploma of such person.

3. For unprofessional conduct, or for gross ignorance or inefficiency in his profession. Unprofessional conduct shall mean employing what are known as 'cappers' or 'steerers' to obtain business; the obtaining of any fee by fraud or misrepresentation; wilfully betraying professional secrets; employing directly or indirectly any student or any suspended or unlicensed dentist to perform operations of any kind, or to treat lesions of the human teeth or jaws, or correct malimposed formations thereof; making use of any advertising statements of a character tending to deceive or mislead the public; advertising professional superiority or the performance of professional services in a superior manner; advertising prices for professional service; advertising by means of large display, glaring light sign, or containing as a part thereof the representation of a tooth, teeth, bridge work or any portion of the human head; employing or making use of advertising solicitors or free publicity press agents; or advertising any free dental work or free examination; or advertising to guarantee any dental service, or to perform any dental operation painlessly; or habitual intemperance or gross immorality. The proceedings under this section may be taken by the board from the matters within its knowledge, or may be taken upon the information of another; provided, however, that if the informant is a member of the board, the other members of said board

shall constitute the board for the purpose of finding judgment of the accused. All accusations must be in writing, verified by some party familiar with the facts therein charged, and three copies thereof must be filed with the secretary of the board. Upon receiving the accusation the board shall, if it deem it sufficient, make an order setting the same for hearing, and requiring the accused to appear and answer it at said hearing, at a specified time and place, and the secretary shall cause a copy of the order and of the accusation to be served upon the accused at least 10 days before the day appointed in the order for said hearing. The [fol. 9] accused must appear at the time appointed in the order and answer the charges and make his defense to the same, unless for sufficient cause the board assign another day for that purpose. If he do not appear the board may proceed and determine the accusation in his absence. If the accused plead guilty or refuse to answer the charges, or, upon the hearing thereof, the board shall find them or any of them true, it may proceed to a judgment of either revoking his license or suspending it. The board and the accused may have the benefit of counsel, and the board shall have power to administer oaths, take the depositions of witnesses in the manner provided by law in civil cases and compel them to attend before it in person the same as in civil cases, by subpoena issued over the signature of the secretary and the seal of the board and in the name of the people of the state of Oregon. Upon the revocation of any license the fact shall be noted upon the records of the board of dental examiners and the license shall be marked as cancelled upon the date of its revocation. The secretary of the board shall, upon judgment of suspension or revocation being entered, transmit to the county recorder wherein the license of the licensee affected by such judgment is recorded a copy of such judgment order, certified to as such by said secretary of the board, for record, and the same shall be recorded in the same manner and in the same book wherein is kept the record of the certificate to practice dentistry. In case of the revocation of a license by the said board the licentiate whose license shall have been revoked by the said board shall have the right to appeal from said revocation within 30 days of the cancellation of said license. Such appeal shall be to the circuit court in and for the county in which was held the meeting of the board in which such revocation was made.

In case a person desires to take such appeal he shall serve, or cause to be served, upon the secretary of said board a written notice of such appeal, which shall contain a statement of the grounds of such appeal, and shall file in the office of such secretary an appeal bond with good and sufficient surety, to be approved by such secretary, to the state of Oregon, conditioned for the speedy prosecution of such appeal and the payment of such costs as may be charged against him upon such appeal. Said secretary, within 10 days after the service of said notice of appeal, and the filing and approval of said bond, shall transmit to the clerk of the circuit court, to which said appeal is taken, a certified copy under the seal of said board of accusations on which the revocation was based, the ground for appeal, together with the notice and bond of appeal. The clerk of such court shall thereupon docket such appeal causes and they shall be tried in all respects as ordinary civil actions and like proceedings shall be had thereon. Upon such appeal said cause shall be tried de novo. Either party may appeal from the judgment of this circuit court to the supreme court in the manner as [fol. 10] civil actions may be appealed thereto. The judgment shall be stayed from the date of the approval of said bond until final determination of said appeal."

VI

That the law passed by the 1933 session of the Oregon Legislature will go into effect, under a provision of the Constitution of the State of Oregon, on June 9, 1933.

VII

That during all the time that plaintiff has been engaged in the practice of dentistry as aforesaid, plaintiff advertised his occupation and his business in the daily newspapers and other periodicals and by means of signs displayed on the windows and walls on the outside of the building in which he maintains his offices; that in said advertisements plaintiff represented his professional skill and ability; that he exercised his profession and occupation with a high degree of efficiency; that he had acquired superior skill and ability and knowledge in the practice of dentistry and his ability to perform the professional services of dentistry in a superior manner; that he also represented in said advertisements the prices that he would

charge for various services to be rendered; that some of the advertising was by means of large display signs, glaring light signs, and plaintiff used in connection with said advertisements pictures or illustrations of a tooth, teeth and bridge work; that in connection with said advertising he employed the services of advertising solicitors who are engaged in the business of advising and counseling and writing advertisements; that plaintiff in said advertisements represented that he makes examinations for prospective patients without making any charge therefor; that in said advertisements he represented and represents that he guarantees all dental work performed by him, and represents that dental operations are performed painlessly, and that plaintiff has conducted for a long period of time and now conducts this type of advertising.

[fol. 11] VIII

That plaintiff has developed and acquired a very high degree of skill and ability in the practice of his profession of dentistry, in every branch thereof, which is superior to the ability of the great majority of practicing dentists, which superior ability has been acquired by a long and extensive training afforded by a very large practice; that by reason of the advertising practices referred to above plaintiff has acquired a very large business with a very large number of patients; that during the period of time that he has practiced his profession of dentistry he has treated directly, and there have been treated by his assistants under his supervision, approximately seventy-five thousand patients; that there are now being treated at his office approximately 150 patients daily who are treated by plaintiff and by assistants under the direct supervision of the plaintiff; that all assistants employed by plaintiff in his offices have always been duly licensed dentists holding certificates issued by the Oregon State Board of Dental Examiners; that all of the assistants employed by plaintiff at all times were selected with the highest degree of care and attention as to their ability to practice dentistry, and all employees selected did possess a very high degree of ability in the performance of all dental operations and were and are capable of and do render superior dental services; that by reason of the large volume of business done by the plaintiff as aforesaid it has become possible

for him to standardize office management and operations, to purchase supplies and materials necessary for use in dental operations in large quantities and at prices a great deal lower than dentists who are obliged to buy in small quantities; that by reason of the vast amount of business performed plaintiff has been able to establish a uniform schedule of prices for the great majority of dental operations to be performed.

IX

That plaintiff's ability to standardize prices and to ad- [fol. 12] vertise fixed prices for certain definite dental operations is due to the fact that the prices of materials used in dental operations and in the manufacture and supplying of false teeth, bridge work and dental plates are standardized in the market; that the materials purchased by plaintiff for use in his dental operations are always the very best and of the highest quality obtainable in the market; that by reason of the aforesaid facts plaintiff is enabled to represent truthfully, honestly and in good faith to the public by means of the advertisements that he possesses superior professional skill and ability in the performance of all dental operations involved in the practice of dentistry; to represent truthfully, honestly and in good faith that he will perform certain dental operations at certain fixed prices, and to represent in said advertisements truthfully, honestly and in good faith that he will guarantee all dental services performed by him or under his supervision and to represent in said advertisements truthfully, honestly and in good faith his ability to perform dental services painlessly, and that all advertisements utilized by plaintiff whether in the public press or periodicals or by means of signs of all kinds, have always been and now are absolutely truthful and made in good faith with the intention of carrying out each and every of the representations contained therein.

X

That by resorting to advertising of the type and in the manner described above, plaintiff has been enabled to build up a very large and lucrative practice with a large number of patients, and by reason thereof it has become possible for plaintiff to reduce the price of dental service to the

public continuously to a very material extent, and plaintiff has thereby made it possible for a great many people to obtain needed dental services and attention, treatment and service who would otherwise have been unable to obtain the same if they were obliged to pay prices that must be charged by dentists whose practice is limited to but a small number of patients; that the plaintiff's practice of advertising in the manner described above has enabled him [fol. 13] to render a very great and beneficial public service which has been and is of great benefit to the health, comfort and happiness of a great number of people who otherwise would have been deprived of the aid and assistance of competent and skilled dentists.

XI

That without the practice of advertising in the manner described herein, it would have been and is impossible to build up a large practice so as to enable a dentist to affect the economies in operation that would enable the plaintiff or any other dentist to render a high class of dental service at a very low price so as to make it possible for even the poorest people to obtain proper and adequate dental service.

XII

That obedience to and enforcement of the pretended statute adopted at the 1933 session of the Legislature, as aforesaid, would deprive the people of the State of Oregon of the benefits to be derived from the use of advertising practices referred to herein.

XIII

That by means of the type of advertising referred to herein plaintiff has built up and established a very lucrative and profitable business, with a large following; that he has expended a very large sum of money in said advertising; that if the aforesaid amended statute is enforced plaintiff's business will be destroyed or very materially impaired.

XIV

That pursuant to the aforesaid practices of advertising plaintiff has entered into a contract with the Oregon Neon

Corporation by the terms of which the said Oregon Neon Corporation constructed and hung upon the outer walls of plaintiff's offices a large Neon illuminated sign advertising the plaintiff's business in the manner referred to above; that by the terms of said contract plaintiff has obligated himself to retain said sign for a period of forty-four [fol. 14] (44) months from October 1, 1932, and to pay therefor the sum of Fifty Dollars ($50.00) per month during the entire period of said term; that the amended law referred to above, if enforced, will render the signs referred to herein useless and unlawful; plaintiff will be compelled to remove and destroy the same and will thereby be deprived of his property without due process of law.

XV

That pursuant to the advertising practices followed by plaintiff, as aforesaid, plaintiff has entered into binding and enforcible contracts with newspapers published in the City of Portland, to-wit: The Oregonian, Daily Journal, and the News-Telegram, to use a definite amount of space for advertising purposes for a period of time having a year to run from the date hereof, and plaintiff has obligated himself by said contracts to pay therefor; that when said amended law becomes effective and the same is enforced it will become unlawful for plaintiff to utilize the space contracted for with said newspapers in the manner provided for herein; that by reason thereof the said act unlawfully impairs the obligation of the said contracts and deprives the plaintiff of property without due process of law.

XVI

That pursuant to the advertising practices followed by plaintiff, as aforesaid, plaintiff entered into a lease for his offices in the building known as the Alisky Building, in the City of Portland, Multnomah County, Oregon, which is located at the Northwest corner of Morrison and Third Streets in said City, on the first floor thereof; that said location was selected by plaintiff because it is a thickly populated neighborhood and a much travelled district; that plaintiff made a lease for said space for a period of ten (10) years, which lease has still approximately forty-four (44) months to run from the present time; that the said lease was made because of its strategic location for advertising

purposes; that by reason of the said location plaintiff was [fol. 15] compelled to and did obligate himself to pay a very high rental for said office space; that when the said amended act goes into effect and the same is enforced plaintiff will be compelled to remove the advertising signs placed thereon and the location will become valueless to the plaintiff as a means of attracting the attention of the public to the representations contained on said signs, and by reason thereof the passage and enforcement of said act will constitute an unlawful impairment of the obligation of plaintiff's contract and will operate to deprive plaintiff of property without due process of law.

XVII

That by reason of the advertising practices referred to above and the development of plaintiff's business as a result thereof, plaintiff was compelled to and did establish large offices and laboratory and entered into contracts of employment with a large number of assistants; that when said pretended act goes into effect and the same is enforced the business of the plaintiff will as a result thereof become greatly diminished to such an extent that he will be compelled to abandon the equipment and offices established as aforesaid, the property contained therein will become useless and he will be compelled to breach the contracts entered into with employees as aforesaid and to discharge the same, and by reason thereof the passage and enforcement of said pretended act will result in impairment of the obligation of plaintiff's contract with said employees and will unlawfully deprive plaintiff of property without due process of law.

XVIII

That the aforesaid amended act adopted at the 1933 session of the Oregon Legislature is referred to herein as the "pretended act" for the reason that the same is unconstitutional and void, violating the Constitution of the United States and also the Constitution of the State of Oregon, in that the said statute deprives the plaintiff of property without due process of law, impairs the obligation of plaintiff's [fol. 16] contracts, constitutes class legislation, and is so indefinite and uncertain as to be incapable of enforcement, and denies to the plaintiff the equal protection of the law.

XIX

That the specific portion of said act which plaintiff claims to be unconstitutional and void is the portion thereof reading as follows, to-wit:

"advertising professional superiority or the performance of professional services in a superior manner; advertising prices for professional service; advertising by means of large display, glaring light sign, or containing as a part thereof the representation of a tooth, teeth, bridge work or any portion of the human head; employing or making use of advertising solicitors or free publicity press agents; or advertising any free dental work or free examination; or advertising to guarantee any dental service, or to perform any dental operation painlessly;"

XX

That the performance of any of the acts described in the said portion of the amended statute has no relationship whatsoever to the health, morals, safety or peace of the public at large; that it has no relationship whatsoever and has no tendency to regulate the skill, attention and ability of the plaintiff or of any dentist practicing dentistry in the State of Oregon, and said provisions are therefore arbitrary, abusive and discriminatory.

XXI

That said pretended law is unconstitutional and void because it violates and contravenes the provisions of the Constitution of the United States and the Constitution of the State of Oregon in the following respects, to-wit:

(a) The said pretended law attempts to deprive plaintiff of his property without due process of law and in violation of Section 1, Article 14 of the Amendments to the Constitution of the United States, which provides that no state shall deprive any person of propetry without due process of law.

(b) The said pretended law attempts to impair the obli-[fol. 17] gations of plaintiff's contracts in violation of Section 10, Article 1 of the Constitution of the United States and of Section 21, Article I of the Constitution of the State of Oregon.

(c) The said pretended law attempts to deny to plaintiff the equal protection of the laws in violation of Section k. Article 14 of the Amendments to the Constitution of the United States.

(d) That said pretended law violates the provisions of Section I, Article 14 of the Amendments of the Constitution of the United States which provides that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.

(e) That the said pretended law attempts to impose unreasonable and unlawful restrictions upon the exercise of the plaintiff's profession of dentistry and thereby affect his property right therein.

XXII

That each of the defendants does now publically declare, and publish that said pretended law is valid and enforcible, and said defendants now publically threaten and declare that they will enforce said pretended law and all the provisions thereof from and after the date that it becomes effective, and that they will thereupon institute proceedings for the revocation of the license to practice dentistry of anyone who violates the provisions of said pretended act.

XXIII

That unless defendants are restrained and enjoined from instituting and prosecuting any proceedings during the pendency of this suit for a permanent injunction, defendants will institute and prosecute a proceeding for the revocation of plaintiff's license to practice dentistry, if he should continue the practice of advertising in the manner hereinabove set forth, and he will thereby be caused irreparable damage and injury.

XXIV

That said pretended law should now be declared uncon- [fol. 18] stitutional and void, and defendants should now be enjoined and restrained from enforcing said pretended law on and after June 9, 1933.

XXV.

That plaintiff has no plain, speedy or adequate remedy at law.

Wherefore, plaintiff prays for a decree declaring Chapter 166 of the Oregon Laws of 1933, in so far as it defines unprofessional conduct to be as follows:

"advertising professional superiority or the performance of professional service in a superior manner; advertising prices for professional service; advertising by means of large display, glaring light sign, or containing as a part thereof the representation of a tooth, teeth, bridgework or any portion of the human head; employing or making use of advertising solicitors or free publicity press agents; or advertising any free dental work or free examination; or advertising to guarantee any dental service; or to perform any dental operation painlessly;"

and authorize the revocation of the license of a dentist who is guilty of any of the acts referred to above, and that the defendants, and each of them, be permanently enjoined and restrained from enforcing the aforesaid provisions of the said statute, and from instituting and prosecuting, or causing to be instituted or prosecuted, or to entertain any proceeding instituted by anyone else for the purpose of revoking the license of the plaintiff upon the grounds specified in the foregoing portion of the statute, and that pending the determination of this suit and the entry of a final decree herein, a temporary injunction be issued to restrain the defendants from enforcing the provisions of said statute, and that they be allowed their costs and disbursements incurred herein and for such other and further relief as to the Court may seem just and proper.

S. J. Bischoff, Frank J. Lonergan, Attorneys for Plaintiff.

[fol. 19] *Duly sworn to by Harry Semler. Jurat omitted in printing.*

[fol. 20] [File endorsement omitted]

[Title omitted]

IN CIRCUIT COURT OF MULTNOMAH COUNTY

DEMURRER—Filed June 19, 1933

Come now the defendants and each of them in the above entitled cause and demur to the plaintiff's complaint upon

the ground and for the reason that said complaint does not state a cause of suit against the defendants or against any of them. In support of said demurrer defendants rely upon Section 1-605 of the Oregon Code Annotated.

In our opinion said demurrer is well founded in law and the same is not filed for purposes of delay.

Herzog and Kenin, and Harris, Smith & Bryson, Attorneys for Defendants.

Due and legal service of the foregoing by receipt of a duly certified copy thereof, as required by law, is accepted in Multnomah County, Oregon, on this — day of June, 1933.

S. J. Bischoff, of Attorneys for Plaintiff

[fol. 21] [Title omitted]

IN CIRCUIT COURT OF MULTNOMAH COUNTY

ORDER SUSTAINING DEMURRER—Oct. 19, 1933

The above cause having duly come on for hearing on defendants' demurrer to plaintiff's complaint, and argument of counsel having been heard and the court having considered the matter.

It is hereby ordered that said demurrer be and the same is hereby sustained; and

It is further ordered that plaintiff have ten days from the date hereof in which to plead further herein.

Dated at Portland, Oregon, this 19 day of October, 1933.

Hall S. Lusk, Judge

[fol. 22] [File endorsement omitted]

IN CIRCUIT COURT OF MULTNOMAH COUNTY

No. 109-931.

HARRY SEMLER, Plaintiff,

vs.

OREGON STATE BOARD OF DENTAL EXAMINERS ET AL., Defendants.

OPINION—Filed Oct. 19, 1933

By this suit the plaintiff challenges the constitutionality of Chapter 166 of the Laws of 1933, relating to the practice of dentistry.

The law prior to amendment defined "unprofessional conduct," for engaging in which the penalty is revocation or suspension of the dentist's license, as follows: Employing what are known as "cappers" or "steerers" to obtain business. Obtaining of any fee by fraud or misrepresentation. Wilfully betraying professional secrets. Employing, directly or indirectly, any student or any suspended or unlicensed dentist to perform operations of any kind or to treat lesions of the human teeth or jaws or correct malimposed formations thereof. In making use of any advertising statements of a character tending to deceive or mislead the public. By the 1933 amendment the scope of the previous statutory definition of "unprofessional" conduct is enlarged so as to include therein certain designated types of advertising, namely: Advertising professional superiority or the performance of professional services in a superior manner; advertising prices for professional service; advertising by means of large display, glaring light sign; advertising "containing as a part thereof the representation of a tooth, teeth, bridge work, or any portion of the human head." Employing or making use of advertising solicitors. Employing "free publicity press agents." Ad- [fol. 23] vertising any free dental work or free examination. Advertising to guarantee any dental service. Advertising "to perform any dental operation painlessly."

The plaintiff is a duly licensed and practicing dentist of this State, with offices in the City of Portland. He alleges in his complaint that he has been engaged in the practice of his profession in this state since June 9, 1918; that during that time h*as* has resorted to advertising in most of the ways prohibited by the 1933 act; that he has acquired a degree of skill and ability in the practice of his profession superior to that of the majority of practicing dentists, and by reason of his advertising practices has acquired a very large business with a very large number of patients; that he and his assistants have treated approximately 75000 patients, and now treat 150 patients daily; that he is able to represent truthfully that he possesses superior professional skill and ability and that he will guarantee dental services performed by him, and that all his advertisements have always been truthful and honest; that, if the statute is enforced his business will be destroyed or very materially impaired.

He contends that the legislation deprives him of his property without due process of law and is discriminatory and therefore violates provisions of the constitutions of the United States and of the State of Oregon.

The case is now before the court on demurrer to the complaint.

The plaintiff concedes that the old legislation is unobjectionable from a constitutional standpoint, but asserts that the amended act is arbitrary, and without any reasonable relation to any end within the competency of the state to attain, in that it prohibits advertising harmless in itself and without regard to the truth or falsity of the statements published; that, indeed, the actual legislative purpose was not to protect the public against fraud or imposition or the practices of unskilled or incompetent dentists, but that the real purpose was, by writing into the statute law of the state, the code of ethics of the American Dental Association, to prevent honest advertising, and (to quote from the able brief of plaintiff's counsel) "to remove from the profession any dentist who desires to acquaint the public [fol. 24] with his superior skill or with his willingness to render dental services for less money than another."

In this contention lies the kernel of the controversy. If the legislation is arbitrary, if it cannot be justified as an exercise of the State's power to enact laws in the interest of the public welfare, it is the duty of the court to declare it unconstitutional, because a law not enacted in good faith for the protection of the public good but passed from the sinister motive of annoying or oppressing a particular person or class of persons, is invalid as offending the fundamental principle of the equality of the laws. Yick Wo v. Hopkins, 118 U. S. 356.

On the other hand, it is the position of the defendants that the state has the power, in the exercise of its undoubted right to regulate the practice of a learned profession such as dentistry, to limit the dentist's use of the advertising medium, to the end that the public may be protected from the frauds, artifices and chicane of unscrupulous members of the profession.

The question, then, is whether this statute has been enacted pursuant to the police power of the state. That power has never been better defined than in the classic language of Chief Justice Shaw in the celebrated case of Common-

wealth v. Alger, 7 Cush. (Mass.) 53, when he described it as 'the power vested in the legislature by the constitution, to make, ordain and establish all manner of wholesome and reasonable laws, statutes and ordinances, either with or without penalties, not repugnant to the Constitution, as they shall judge to be for the good and welfare of the commonwealth and of the subjects of the same."

In the enactment of such laws, the Legislature is not limited to the prohibition of acts wich are in themselves harmful.

"A calling," said the Supreme Court in Booth v. Illinois, 184 U. S. 425, "may not in itself be immoral, and yet the tendency of what is generally or ordinarily or often done in pursuing that calling may be towards that which is admittedly immoral or pernicious."

[fol. 25] That the practice of dentistry is subject to reasonable regulations by the Legislature, none will deny. It is today regarded as one of the learned professions. It is a calling which may be pursued, not as a matter of right, but only as a privilege granted by the state upon proof by the applicant that he is qualified by learning, skill and character to assume the duties and obligations and share in the rewards of that profession. The right of the state to impose such conditions cannot be called in question. Dent v. West Virginia, 129 U. S. 114. In that case the Supreme Court said that "the power of the state to enact such laws, regulating the performance of surgery, as are calculated to protect the people from ignorant pretenders and charlatans, has been established by repeated adjudications, and is now too firmly established to admit of doubt."

The practice of dentistry intimately concerns the public health. The relation between dentist and patient is one of trust and confidence. The patient places himself in the dentist's hands and is bound to rely implicitly on his knowledge, skill and honesty. Any law, therefore, which reasonably tends to protect the patient in that relationship comes properly within the state's police power, because the state has the right and the supreme duty of legislating in the interest of the public health and for the prevention of fraud.

Moreover, it is to be remembered that we are dealing here with a profession, and not a business. True, men make their living by the one as by the other, but the entirely

legitimate methods by which a merchant builds up his business may be objectionable and fruitful of evil if employed by the members of a profession. It is to the interest of the public that the standard of character of those practicing a profession be kept as high as possible. To this end efforts are made by boards charged with the duty of determining the fitness of applicants for admission into the various learned professions to exclude all those who are undesirable from the standopint of character. It would be a legiti- [fol. 26] mate concern of the State to make a profession as unattractive as possible for those who look upon that profession as purely a money-making pursuit, and are little mindful of the important duties, binding in conscience and rarely enforceable by coercive measures, which they assume when they are licensed by the state to practice one of the healing arts.

The legislation now under attack only indirectly regulates the practice of dentistry. Directly, it is a limitation on the means by which the dentists may attract patrons to his office. It is a prohibition on advertising for patients by the dentist proclaiming his superior merits, and in the other ways specified in the statute. It may be that the Legislature enacted into law what was formerly only a code of ethics, but that fact by itself would not make it repugnant to constitutional guarantees, if the code of ethics reasonably tends to promote a legitimate legislative object.

It is my opinion, having in mind the nature of the privilege which the dentist enjoys at the hands of the state, the character of the relationship between dentist and patient and the direct interest of the state in the profession of dentistry and in the standards of honesty and devotion to duty to be observed by its members, that the Legislature, in the exercise of the police power and particularly that phase of it which relates to the public health and the prevention of fraud, has not violated rights guaranteed to the plaintiff by the constitution of this State or the United States in enacting the legislation now challenged.

It may be that plaintiff has never, as he claims, departed from the strict truth in his advertisements. It may be that he is as skillful and competent and careful as he asserts. But, the Legislature is not for that reason limited to the prohibition of only false or misleading advertisements. The additional opportunity which advertising of the allur-

ing and braggadocio type gives to the unscrupulous dentist to beguile gullible people into his office and fleece them, may well have induced the Legislature to believe that the existing legislation was not adequate for the purpose for which it was enacted, and the court cannot say that the Legisla- [fol. 27] ture was without good grounds for that belief. The commercializing and degredation of an honorable profession which may easily result from unrestrained advertising by illegitimate and unconscionable methods which are easily practised but with the utmost difficulty can be proved and prevented, were no doubt considerations which impelled the Legislature to the action which it took. These are evils which are a proper subject of legislative concern, and which the enactment would tend to correct.

The Supreme Court of Washington in the case of Laughney v. Maybury, 145 Wash. 146; 259 Pac. 17; 54 A. L. R. 393, sustained the validity of a similar law with relation to osteopaths. The Colorado court in the case of Chenoweth v. State Board of Medical Examiners, 141 Pac. 132, held unconstitutional a statute which prohibited the publication and circulation by a physician of advertisements relative to any disease of the sexual organs. If some of the principles announced in the opinion in the Chenoweth case are to be followed, then the law here in question must be declared invalid, but the Colorado court took no account of what seem to me to be controlling considerations based on the fact that the law dealt with a learned profession. Moreover, there are, in my opinion, obvious grounds of public policy which justify a law prohibiting the advertising of remedies for sexual diseases, whether by physicians or any one else. I do not deem it necessary to refer to any of the numerous other authorities cited in the exhaustive briefs of counsel. I have read them with care. I think the Washington decision expresses the correct rule of constitutional law to be applied to this case.

The contention that the act is discriminatory because it applies only to dentists, and not to physicians and other professions, cannot be sustained. Neither due process of law nor the equal protection of the laws is denied "when a law is founded on some natural basis of classification and all persons within its scope are treated alike under similar circumstances." McGehee on Due Process of Law, p. 312. As that author says: "When regulations are imposed upon

one trade or business on valid grounds, it is not a subject of complaint that other kinds of business are not subject [fol. 28] to like regulations." Here, the legislature was dealing with the subject of the practice of dentistry. It was not required to enact similar legislation for other professions in order to avoid the charge of discrimination.

It is further urged that some of the provisions of the law are so vague that they are void for indefiniteness and uncertainty; and that the statute is void for want of a proper title. As to the former contention, it is sufficient to say that plaintiff alleges in his complaint that he is doing the very things concerning which he makes the objection of uncertainty. As to the title, the contention is that the word "misconduct" in the title of the 1913 Act (Chapter 353, Laws 1913) and which may be said to be incorporated in the title to the 1933 Act, is not broad enough to cover the acts included in the definition of unprofessional conduct in the 1933 Act, and, therefore, that the title does not conform to Article 4, Section 20 of the State constitution which provides:

"Every act shall embrace but one subject, and matters, properly connected therewith, which subject shall be expressed in the title * * *"

Passing the question as thus presented, it seems to me that inasmuch as the title of the 1933 act contains the words "relating to the practice of dentistry," the contention of the plaintiff in this particular is without merit.

In concluding this brief statement of the reasons which have lead me to hold this act to be a valid exercise of the police power, I refer again to those allegations of the plaintiff's complaint wherein it is stated that he and his assistants are treating 150 persons daily, and that this large volume of business will be destroyed or substantially impaired if the plaintiff is not permitted to advertise in the future as he has in the past. The plaintiff thus admits that he is unable either to secure a large number of patients or to hold them by his skill and ability alone, but that advertising of the kind denounced by the statute as unprofessional conduct is essential to his financial success. The picture thus graphically painted of an honorable profession thoroughly commercialized suggests a situation that impelled the Legislature to the adoption of this act. If so,

[fol. 29] the court cannot say that that body was not justified in the course that it took.

The demurrer to the complaint will, therefore, be sustained.

The plaintiff will have five days in which to file an amended complaint, and the application of the plaintiff heretofore made for leave to amend the complaint by alleging a defect in the title of the Act will be allowed, so that this question can be carried to the Supreme Court, if it is so desired.

Hall S. Lusk, Judge.

[fol. 30] In Supreme Court of Oregon, en banc

Harry Semler, Appellant,

vs.

Oregon State Board of Dental Examiners, L. A. Rosenthal, Leonard R. Andrews, Carey H. Jenkins, Arthur F. Weeks and M. C. Harris, Members of the State Board of Dental Examiners, Respondents

Appeal from Multnomah County.

Honorable Hall S. Lusk, Judge.

Argued and submitted June 6, 1934.

Lawrence T. Harris and Harry N. Kenin (Harris, Smith & Bryson and Herzog & Kenin on brief) for respondents.

S. J. Bischoff and Frank J. Lonergan for appellant.

Belt, J.:

Affirmed.

[File endorsement omitted.]

[fol. 31] Opinion—Filed June 26, 1934

Belt, J.:

Plaintiff, a duly licensed dentist who has practiced his profession in the city of Portland since 1918, seeks to enjoin the threatened action of the State Board of Dental Examiners to revoke or suspend his license for an alleged violation of certain provisions of chapter 166 of the Laws of Oregon for 1933, amending section 68-1013, Oregon Code

1930, relating to the practice of dentistry. The gravamen of plaintiff's complaint is that the following provisions of the act defining unprofessional conduct which constitute ground for revocation or suspension of a license to practice dentistry are unconstitutional and void: "Advertising professional superiority or the performance of professional services in a superior manner; advertising prices for professional services; advertising by means of large display, glaring light signs, or containing as a part thereof the representation of a tooth, teeth, bridge work or any portion of the human head; employing or making use of advertising solicitors or free publicity agents; or advertising any free dental work or free examination; or advertising to guarantee any dental service, or to perform any dental operation painlessly; * * *." Other grounds specified in the act for revoking or suspending a license are not challenged by plaintiff. He does not question that part of the act relating to advertising which prohibits, "making use of any advertising statements of a character tending to deceive or mislead the public."

It appears from the complaint that while plaintiff was engaged in the practice of dentistry he (1) employed the services of advertising solicitors; (2) used as advertising mediums large display signs and glaring light signs showing illustrations of a tooth, teeth and bridge work; and (3) advertised in the daily newspapers as follows: (a) That he had acquired superior skill and ability and knowledge in the practice of dentistry and his ability to perform the professional services of dentistry in a superior manner; (b) the prices that he would charge for various services to be rendered; (c) that he makes examinations for prospective patients without making any charge therefor; (d) that he guarantees all dental work performed by him; and (e) that dental operations are performed painlessly.

[fol. 32] Plaintiff alleges in substance that by reason of the methods of advertising above mentioned he has acquired a large and lucrative practice; that he and his employed assistants—who are licensed practitioners and working under his supervision—have treated daily at his offices approximately 150 patients; and that on account of such volume of business he has been enabled to render service to his patients at a much lower price than charged by most practitioners. Plaintiff also alleges that all of his advertisements were made in good faith and honestly express

his "intention of carrying out each and every of the representations contained therein". It is also averred that if the above statutory provisions are enforced the plaintiff will sustain irreparable loss and injury.

Plaintiff alleges as conclusions of law that the above portion of chapter 166, Laws of Oregon for 1933, is unconstitutional and void because it (1) deprives him of property without due process of law; (2) impairs the obligation of contracts; (3) constitutes class legislation; (4) is so indefinite and uncertain as to be incapable of enforcement, and (5) denies to him equal protection of the law.

A general demurrer to the complaint was sustained and, upon refusal of the plaintiff further to plead, the suit was dismissed. The plaintiff appeals.

The history of legislation in the various states regulating the conduct of practitioners in the learned professions—law, medicine, and dentistry—disclose a marked tendency in recent years to enact more stringent regulations, that the standards of these professions be raised and the ignorant, gullible members of the public be protected from quacks and charlatans who spurn the ethics of their profession and thrive by flamboyant methods of advertising and "high powered salesmanship". Six states, viz., California, Illinois, Michigan, South Dakota, Utah, and Wisconsin, have statutes similar to that of this state prohibiting dentists from employing "cappers" or "steerers" to obtain business. Thirty-two states of the union make it unprofessional conduct for a dentist to make any advertising statement of a character to deceive or mislead the public. Arkansas, Delaware, Illinois, Maryland, Minnesota, [fol. 33] New York, Ohio, and Wisconsin, have similar statutes to that of Oregon prohibiting "advertising professional superiority or the performance of professional services in a superior manner". Five states, viz., Delaware, Illinois, Maryland, New York, and Wisconsin, have statutes making it unprofessional conduct for a dentist to advertise prices for professional services. Delaware, Illinois, New York, and Wisconsin have similar statutes regulating the practice of dentistry and providing against "advertising by means of a large display, glaring light signs, or containing as a part thereof the representation of a tooth, teeth, bridge work or any portion of the human head". Delaware, Illinois, Maryland, and New York prohibit a dentist

from "employing or making use of advertising solicitors or free publicity press agents". Illinois provides against advertising "free dental services or examinations as an inducement to secure dental patronage". There are ten states which prohibit advertising "to perform any dental operation painlessly". We are not unmindful that the statutory enactments of other states governing professional conduct of dentists have no direct bearing upon the legal questions involved herein, but such legislation—which in most instances is an adoption of the rules of ethics of the American Dental Association—is at least illuminating relative to the trend of legislation to protect the public against fraud and deception.

The legislature, in enacting these drastic regulations, was not dealing with a trade or business, but with a profession whose members deal with the public under an intimate and confidential relationship. The patient ordinarily has implicit confidence in his dentist. He knows not the intricacies of the treatment nor the reasonable value thereof. He submits to treatment with an abiding faith that his dentist is efficient and will deal honorably with him. Hence cases involving the regulation of a trade or business—in which every person has a right to engage—have slight analogy to the one under consideration.

The plaintiff has been privileged to practice his profession by virtue of a license granted by the state, and, in order to obtain the same, it was necessary for him to conform to certain rules and regulations enacted for the pro-
[fol. 34] tection of the public. That, after the issuance of the license, the state, in the exercise of its police power, may also prescribe reasonable rules and regulations governing the subsequent conduct of the licensee, naturally follows. It would likewise seem well founded in law that one who aspires to treat human ailments and thereby invite the confidence of the public to an exceptional degree should be compelled to submit to such regulations as will guard the public as far as possible against fraud and deception. In other words, the extent to which the police power may be exercised depends largely upon the manner and degree in which the public welfare is involved. We conclude then that, while the right of the plaintiff to practice his profession is a valuable one and is in the nature of a property right of which he cannot be arbitrarily deprived, it is, nevertheless, a privilege subordinate to the duty of the

state to enact reasonable laws to protect the public health and safety.

Courts, with good reason, have refused to define police power for to do so might thus limit it to the detriment of the public welfare, in the light of changing social and economic conditions. The law should follow closely in the wake of an advancing civilization. Regulation of professional conduct deemed unduly drastic ten years ago might well be considered reasonable under present day conditions. As well said by that eminent jurist, Mr. Justice Field, speaking for the United States Supreme Court, in Dent v. West Virginia, 129 U. S. 114, 32 L. Ed. 623, 9 S. Ct. 231:

"The power of the State to provide for the general welfare of its people authorizes it to prescribe all such regulations as, in its judgment, will secure or tend to secure them against the consequences of ignorance and incapacity, as well as of deception and fraud."

In the enactment of the legislation above set forth, providing for the revocation or suspension of a license to practice dentistry, did the legislature go beyond the proper exercise of the police power? Is there any reasonable relation between the questioned prohibitory provisions of chapter 166, Laws 1933, and the object or purpose which the legislature had in mind, viz., the protection of the public against fraud and deception in the practice of dentistry? Certainly the need of such legislation rests primarily upon the judgment of the legislature. It is only when a legislative act clearly appears arbitrary, capricious, and without reasonable relation to the object sought to be attained that [fol. 35] courts will interfere. The presumption is in favor of the validity of the act and that the legislature in enacting the same did so with the view of promoting the public welfare. People v. Griswold, 213 N. Y. 92, 106 N. E. 929, L. R. A. 1915D 538.

Counsel for appellant concede that the state, in the exercise of the police power, has the right to enact legislation to prevent fraud and deception in the practice of dentistry, but assert that these provisions of the act to which attention has been directed do not have such tendency and are an arbitrary interference with his right to practice his profession. It may be that the appellant acted in good faith

and that the representations made in his advertisements express the truth, but such is beside the question. The more pertinent inquiry is: Does the kind of advertising prohibited afford the unscrupulous practitioner a means of perpetrating fraud and deception upon his patients? In itself, there is nothing harmful in merely advertising prices for dental work, or in displaying glaring signs illustrating teeth and bridge work, but who will doubt that practitioners not willing to abide by the ethics of their profession often resort to such advertising methods to lure the credulous and ignorant members if the public to their offices for the purpose of fleecing them. The act does not prohibit all advertising by dentists, but bars only certain specified kinds of advertising as being inimical to the public welfare. The legislature in the passage of the 1933 amendment, which strengthened and amplified prior statutory regulations, relative to the practice of dentistry, undoubtedly was aware of existing conditions and believed the evils resulting from such advertising methods justified further protection to the public. We are unable to say that there was no real or substantial basis for this legislative conclusion. The burden to show to the contrary rests upon the party challenging the validity of the act.

It is well settled that the legislature may enact laws which tend to prevent the perpetration of fraud although the act prohibited is harmless in itself: Kirk v. State, 126 Tenn. 7, 150 S. W. 83, Ann. Cas. 1913D 1239. The police power is not limited to the prohibition of acts which are malum in se. If the rule were otherwise, the public could never be ade- [fol. 36] quately protected against the evil effects of that large category of acts which under certain conditions, offer special opportunity to perpetrate fraud and deception. As stated by Freund in his splendid text on Police Power section 272, "The police power undertakes to give an ampler protection, both by adopting precautionary measures and by forbidding certain practices irrespective of an actual intent to defraud."

There is a species of "bait advertising" which, while not fraudulent per se, nevertheless is used by unscrupulous practitioners to lure the unsuspecting public. Such high pressure advertising generally consists of half-truths. Inducing patronage by representations of "painless dentistry," "professional superiority," "free examinations,"

and "guaranteed" dental work is, as a general rule, the practice of the charlatan and the quack to entice the public. Those who have had experience in the extraction and restoration of teeth know full well that "painless" dentistry is a delusion and a snare. Can it reasonably be contended that regulation of such flamboyant and high pressure methods of advertising is beyond the realm of the police power?

In People v. Girard, 145 N. Y. 105, 45 Am. St. Rep. 595, the court sustained the validity of a statute which prohibited the manufacture or keeping for sale any vinegar containing artificial coloring matter even though not harmful to health and the vinegar so colored was equal to the best vinegar of the class which it was colored to represent. The coloring matter, however, was considered as a means of causing a consumer to believe that he was purchasing cider vinegar. Hence, the legislation was deemed a proper exercise of the police power.

The constitutionality of the Bulk Sales Law was involved in Coach v. Gage, 70 Or. 183, 138 P. 847, and the court, in sustaining the act, said:

"Now, the purchase of a stock of goods in bulk is in itself an innocent act; but, for the reason that persons carrying on the business of dealing in merchandise more frequently than otherwise purchase a part of their stock on credit and often from dealers residing at a distance, and because it has become a matter of common knowledge that transfers of stocks of goods in bulk with intent to defraud creditors are a frequent form of swindling, the legislatures [fol. 37] of a majority of the states, in the exercise of their police powers, have enacted laws to safeguard such transfers, * * *"

To the same effect see Lemieux v. Young, 211 U. S. 489, 53 L. Ed. 295, 29 S. Ct. 174.

While courts are not in accord concerning the validity of statutory regulations similar to those under consideration, in our opinion they have been sustained by the weight of authority and the better reasoned cases. Laughney v. Maybury, 145 Wash. 146, 259 P. 17, 54 A. L. R. 393, is in keeping with our views and strongly supports the constitutionality of the act. In that case the validity of a statutory provision (subd. 4 of section 10063 of Remington's Revised Statutes of Washington) was upheld prohibiting oste-

opathic physicians and surgeons from "all advertising of any kind or character other than the carrying of a professional card, window, or street sign." Appellant asserts that this case is not good law and that its effect as an authority has been largely destroyed by the two later cases of State Board v. Macey, 96 Wash. 614, 159 P. 701, and State Board v. Jordan, 92 Wash. 314, 158 P. 982. We cannot agree with this contention. The statute under consideration in the Macey case was entirely different from the one involved in Laughney v. Maybury, supra. The objection to it was based upon its alleged uncertainty and vagueness and no question was raised concerning whether the legislation was a proper exercise of the police power. The same distinction applies to the Jordan case. Neither of these decisions indicates that a law prohibiting or regulating advertising, and not specifically mentioning deceit, misrepresentation or injury to the public welfare, would be unconstitutional.

In State Medical Board v. McCrary, 95 Ark. 511, 131 S. W. 544, Ann. Cas. 1912A 631, the validity of a statute was upheld authorizing the revocation of a license to practice medicine on the ground of "publicly advertising special ability to treat or cure chronic and incurable diseases." Appellant, in quoting the statute, inadvertently uses the word "and" instead of "or" and argues that, since it is fraudulent to advertise ability to cure incurable diseases, this case is not in keeping with Laughney v. Maybury, supra. However, it is observed that the statute also deals with advertising ability to *treat* incurable diseases and this [fol. 38] does not necessarily involve any element of deception.

In the case of Thompson v. Van Lear, 77 Ark. 506, 92 S. W. 773, 5 L. R. A. (N. S.) 588, the court held that an act forbidding physicians and surgeons to solicit patients by paid agents was a valid exercise of the police power. In commenting on this case, it was said in State Medical Board v. McCrary, supra:

"For like reason, a statute forbidding a physician to advertise for patients in newspapers would be upheld; and, by analogy, a statute forbidding them to advertise their ability to treat and cure certain named diseases would be a valid exercise of the police power."

For other cases involving statutes regulating advertisements by those engaged in professional work as in law, medicine, and dentistry, see cases collated in note 54 A. L. R. 400.

Plaintiff relies largely on Chenoweth v. State Board of Medical Examiners, 57 Colo. 74, 141 P. 132, which holds unconstitutional a statute authorizing the revocation of a license on the ground, among others, of "causing the publication or circulation of an advertisement relative to any disease of the sexual organs." This case supports the theory of appellant but its logic does not appeal to us as being sound and we decline to follow it for the reasons stated in Laughney v. Maybury, supra. Furthermore, this opinion by a divided court, has been greatly weakened by the later cases of People v. Painless Parker, Dentist, 85 Colo. 304, 275 P. 928, 930, and Sapero v. State Board of Examiners, 90 Colo. 568, 11 P. (2d) 555. While these two cases involved questions different from that in Chenoweth v. State Board, supra, the following language in the Parker Dentist Case is significant: "There may be expressions in the majority opinion that give color to some things contained in the defendant's briefs here: but that decision—and we are not to be understood as approving of it—is not authority for the defendant's contention here."

Waller v. State (Tex. Civ. App.) 68 S. W. (2d) 601, also supports the contentions of the plaintiff, but no discussion of the same is necessary, as it is merely a repetition of the reasoning in the case of Chenoweth v. State Board, supra.

[fol. 39] After careful consideration of the able briefs submitted, this court is of the opinion that the challenged statutory regulations were enacted by the state in the proper exercise of its police power and, therefore, they do not violate the due process clause of the federal and state constitutions. The statute has for its purpose the elevation of the standards of the dental profession and the prevention of advertising of a character ordinarily used by unscrupulous practitioners to deceive or mislead the public. Let it again be stated that this act does not prohibit all kinds of advertising by dentists. Plaintiff may still practice his profession and engage in certain advertising but it must be done in compliance with the law.

Appellant contends that the act is class legislation and unconstitutional for the reason that it applies only to den-

tists. It is his theory that the act is directed against advertising and that, since advertising has the same effect regardless of the professions resorting to it, it is discriminatory to limit the same to dentists. The same contention was made in Laughney v. Maybury, supra, and decided adversely to appellant therein. It is not believed that the act is unconstitutional because the legislature did not cover the whole field of possible abuses. As stated in State v. Broden, 181 Minn. 341, 232 N. W. 517:

"In laws of this sort all evils cannot be reached at once nor every desirable object gained in one legislative session."

The same principle was thus enunciated in New York ex rel. Bryant v. Zimmerman, 278, U. S. 63, 73 L. Ed. 184, 49 S. Ct. Rep. 61, quoting from Patsone v. Pennsylvania, 232 U. S. 138, 58 L. Ed. 539, 34 S. Ct. Rep. 281:

"It is not enough to invalidate the law that others may do the same thing and go unpunished, if, as a matter of fact, it is found that the danger is characteristic of the class named."

In Miller v. Wilson, 236 U. S. 373, 59 L. Ed. 628, 35 S. Ct. Rep. 342, a statute fixing hours of labor for women was attacked because of certain exceptions made therein. The court said:

"The contention as to the various omissions which are noted in the objections here urged ignores the well-established principle that the legislature is not bound, in order to support the constitutional validity of its regulation, to extend it to all cases which it might possibly reach."

[fol. 40] We think the state has the power of dealing with each profession as a class unto itself and in so doing does not violate the equal protection clause of the constitution. Class legislation is not involved since the act affects all dentists alike. Plaintiff is in no position to say that he has been unduly discriminated against because the legislature did not also enact similar legislation regulating the conduct of members of other professions. The professions of law, medicine, and dentistry are separate and distinct. Each has different requirements for admission and we

think there may well be a reasonable basis for classification concerning regulation of conduct sebsequent to admission.

We see no merit in the contention of appellant that the title to the act is not broad and comprehensive enough to cover the subject matter of the act and therefore contravenes Art. IV, §20, of the Constitution of Oregon. The title of chapter 166, Laws of Oregon for 1933, reads thus:

"To amend section 68-1004, and section 68-1013, Oregon Code 1930, relating to the practice of dentistry, and to repeal section 68-1014, Oregon Code 1930."

In Oregon Growers' Co-Operative Association v. Lentz, 107 Or. 561, 212, P. 811, it is said:

"In amending a statute it is only necessary that the title to the amendatory act should refer to a particular section of an official compilation of laws: State v. Phenline, 16 Or. 107 (17 Pac. 572). And the amendment will not be objectionable to Section 20, Article IV of the Constitution, unless the provisions of the amendment are such as could not have been included in the original act: Ex parte Howe, 26 Or. 181 (37 Pac. 536).".

Section 68-1013, Oregon Code 1930, was enacted by chapter 353, Laws of Oregon for 1913, and is entitled an act:

"To amend Sections 4777, 4779, 4780 and 4783 of Lord's Oregon Laws and to regulate the use of diplomas and certificates of dentists, and to provide punishment for the violation thereof, and to provide for the revocation and suspension of licenses for the misconduct of the holders thereof, and to provide for the issuing of licenses."

Appellant argues that the word "misconduct" in the act of 1913 includes only those acts of the practitioner which are inherently wrongful or fraudulent and is not sufficiently broad and comprehensive enough to include acts of unprofessional conduct not inherently wrong as defined in the 1933 amendment. We can not agree with this contention. In our opinion the subject matter of the amendatory act in question is germane to the title of the 1913 amendment providing for the revocation of licenses to practice den- [fol. 41] tistry. The word "misconduct" includes unprofessional acts even though not inherently wrongful.

It is urged that the statute is void for uncertainty and vagueness. The very object and purpose of the 1933 amendment was to make the regulations concerning advertising by dentists definite and certain. That plaintiff fully understands the various provisions of the act is demonstrated by the specific allegations of his complaint, showing a violation thereof. See cases in note 54 A. L. R. 404, wherein similar statutes have been held not void as being too vague and uncertain to be enforced.

The decree of the lower court is affirmed. Defendants are entitled to costs and disbursements.

ROSSMAN, J., not sitting.

[fol. 42] IN SUPREME COURT OF OREGON

[Title omitted]

STATEMENT REGARDING FILING AND DECISION ON PETITION FOR REHEARING

And thereafter on the 14th day of August, 1934, a Petition for Rehearing was filed in this court in this cause on behalf of Appellant. Said Petition for Rehearing was denied in an oral order by the Court on September 11, 1934.

[fol. 43] IN SUPREME COURT OF OREGON

En Banc

HARRY SEMLER, Appellant,

vs.

OREGON STATE BOARD OF DENTAL EXAMINERS, L. A. ROSENTHAL, LEONARD R. ANDREWS, CAREY H. JENKINS, ARTHUR F. WEEKS AND M. C. HARRIS, Members of the State Board of Dental Examiners, Respondents.

Appeal from Multnomah County.

JUDGMENT—June 26, 1934

This cause on June 6, 1934, having been duly tried, argued and submitted upon and concerning all questions arising

upon the transcript and record and then reserved for further consideration; and the court having fully considered all said questions as well as suggestions of counsel in their argument and briefs, finds there is not error as alleged.

It is therefore considered, ordered and decreed that the decree of the court below in this cause rendered and entered be and the same is in all things affirmed, and adopted as the decree of this court in this cause.

[fol. 44] The appellant having given an undertaking on appeal with Dr. M. M. Solko as his surety, conditioned that appellant will pay all damages, costs and disbursements awarded against him on appeal; it is therefore ordered and decreed that respondents recover of and from appellant and his said surety their costs and disbursements in this court taxed at $246.00.

It is further ordered that this cause be remanded to the court below from which the appeal was taken, with directions to enter a decree in accordance herewith.

[fol. 45] [File endorsement omitted.]

[Title omitted.]

IN SUPREME COURT OF OREGON

PETITION FOR APPEAL—Filed October 18, 1934

To the Honorable John L. Rand, Chief Justice of the Supreme Court of the State of Oregon:

Comes now your petitioner, Harry Semler, appellant herein, by his attorneys, and respectfully shows:

That on the 19th day of October, 1933, an order in the above entitled cause was entered by the Honorable Hall S. Lusk, Judge of the Circuit Court of the State of Oregon for Multnomah County sustaining the above-named respondents' demurrer to your petitioner's complaint; that appeal from said order was duly taken according to law to the Supreme Court of the State of Oregon; that on the 26th day of June, 1934, a final judgment herein was entered in this court against appellant and thereafter and within time allowed by law appellant duly filed a petition for rehearing, which petition was considered by this court and on the 11th day of September, 1934 was denied, and thereupon said final judgment was re-affirmed.

That the controversy herein involved a statute of the State of Oregon, namely, Section 68-1013 Oregon Code of Laws, 1930, as amended by Act of the Oregon Legislature on March 1, 1933, said amendment being Section 2 of Chapter 166, Laws of Oregon, 1933, the Validity of a portion of which statute was drawn in question by appellant on the [fol. 46] ground that it is repugnant to the Constitution of the United States.

That there is error in the final judgment and the record of proceedings in this cause in the said Supreme Court of the State of Oregon which more fully appears from appellant's assignments of error filed herewith whereby appellant, your petitioner herein, is aggrieved.

Wherefore, petitioner prays for the allowance of an appeal from the aforesaid final judgment of the Supreme Court of the State of Oregon against petitioner to the Supreme Court of the United States, in order that the decision and judgment of the Supreme Court of the State of Oregon may be examined and reversed, and further prays that a transcript of the record, proceedings and papers in this cause, duly authenticated by the Clerk of the Supreme Court of the State of Oregon, may be sent to the Supreme Court of the United States, as provided by law.

Petitioner further prays that the appeal herein may be a supersedeas; that the court by appropriate order may fix the security required with respect to accumulated costs in the lower court and in this court, together with any costs which may be entered in the Supreme Court of the United States against petitioner.

Harry Semler, Petitioner, Senn & Recken and James Arthur Powers, Attorneys for Petitioner.

[fols. 47 & 48] *Duly sworn to by Harry Semler. Jurat omitted in printing.*

[fol. 49] [File endorsement omitted]

[Title omitted]

IN SUPREME COURT OF OREGON

ORDER ALLOWING APPEAL—Filed Oct. 18, 1934

On this 18th day of October, 1934, on reading the petition of Harry Semler, the appellant herein, praying for the issuance of an order herein allowing his appeal to the Supreme Court of the United States from the Supreme

Court of the State of Oregon, and it appearing from said petition and record of the above-entitled cause that there was drawn in question the validity of a statute of the State of Oregon, namely, Section 68-1013 Oregon Code of Laws, 1930, as amended by Act of Oregon Legislature on March 1, 1933, said amendment being Section 2 of Chapter 166, Laws of Oregon, 1933, on the ground that said statute deprives the appellant of his property without due process of law and is repugnant to the constitution of the United States, and that said statute is not a proper exercise of police powers in that said statute further contravenes the provisions of the United States Constitution by an unlawful attempt to deprive and interfere with the petitioner's rights, privileges and immunities guaranteed to him under the Constitution of the United States, and that such petition is a proper petition for the issuance of this order.

[fols. 50 & 51] Now therefore, it is ordered by the undersigned, the Chief Justice of the Supreme Court of the State of Oregon, that said appeal be and the same is hereby allowed, and it is further ordered that the appellant, Harry Semler, execute to the respondents his bond, with surety to be approved by the undersigned, in the sum of Fifteen Hundred $1500.00 Dollars, conditioned according to law, and that when said bond has been approved and filed, the same shall act as a supersedeas and stay the execution on the judgment for costs heretofore recovered by the respondents, including the costs both in the lower court and on appeal to this court.

It is further ordered that the Clerk of this Court, within sixty days from this date, make and transmit to the Clerk of the United States Supreme Court, under his hand and seal of this court, a transcript of the record herein, containing a true copy of all material parts of the record herein which shall be designated by præcipe filed with him by either parties hereto.

Done this 18th day of October, 1934.

John L. Rand, Chief Justice of the Supreme Court of the State of Oregon.

Arthur S. Benson, Clerk of the Supreme Court of the State of Oregon, acknowledges receipt of the foregoing order allowing appeal this 18th day of October, 1934.

Arthur S. Benson, Clerk Supreme Court, State of Oregon.

[fol. 52] [File endorsement omitted]

[Title omitted]

IN SUPREME COURT OF OREGON

ASSIGNMENT OF ERRORS—Filed Oct. 18, 1934

Now comes appellant above named, and in connection with his petition for an appeal to the United States Supreme Court, says that errors have been committed in the above entitled case, and sets forth the following assignment of errors for the purpose of having the same reviewed in the United States Supreme Court:

1. The Supreme Court of the State of Oregon erred in failing to declare invalid and unconstitutional a statute of the State of Oregon, namely, Section 2 of statute 68-1013 Oregon Code Laws 1930 as amended by Chapter 166, page 208, Oregon Session Laws, 1933, in so far as said act prohibits advertising by a dentist, even though such advertising is made truthfully. The act unlawfully discriminates against appellant, denies to him the equal protection of the laws and deprives him of his property without due process of law, in violation of Section 1 of XIV Amendment of the Constitution of the United States.

2. The Supreme Court of the State of Oregon erred in failing to render judgment in favor of appellant on the ground that aforesaid state statute is unconstitutional and void, for the reason that it is an unlawful and unreasonable interference with the conduct of a lawful business, viz., the practice of the dental profession, and is an unlawful at-[fols. 53-63] tempt by the legislative branch of the government to delegate to a Board of Dental Examiners power and duties of the courts, and constitutes an unlawful invasion by the legislative branch of the government into the powers and duties which, under our system of government, belong solely to the courts and judicial branch of the government.

3. The Supreme Court of the State of Oregon erred in holding the amended portion of the aforesaid state statute, which has for its purpose the regulation of the ethics of the Dental profession, to be a proper exercise of police power, and not in violation of Section 1 of XIV Amendment of the Constitution of the United States.

4. The Supreme Court of the State of Oregon erred in failing to hold that aforesaid state statute, in so far as it prohibits advertising only by a dentist and does not prohibit advertising by other professional men similarly situated, unlawfully discriminates against appellant and denies appellant the equal protection of the laws, in violation of Section 1 of XIV. Amendment of the Constitution of the United States.

For which errors the appellant prays that said judgment of the Supreme Court of the State of Oregon, dated June 2, 1934, in the above-entitled cause, be reviewed by the Supreme Court of the United States and reversed, and judgment rendered in favor of appellant, and for costs.

Senn & Recken and James Arthur Powers, Attorneys for Appellant.

[fols. 64-67] Clerk's Certificate to foregoing Transcript omitted in printing.

[fol. 68] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION TO PRINT ENTIRE RECORD—Filed Nov. 30, 1934

Comes now the appellant and adopts its assignments of error as its statement of the points to be relied upon, and represents that the whole of the record, as filed, is necessary for the consideration of the case.

H. R. Colwell, James Arthur Powers, F. S. Senn, Attorneys for Appellant.

[fol. 69] STATE OF OREGON,
County of Multnomah, ss:

Due, timely and legal service by copy admitted at Portland, Oregon, this 27th day of October, 1934.

Ralph V. Herzog & Lawrence F. Harry, of Attorneys for Appellees. James Arthur Powers, H. R. Colwell, Attorneys for Appellant.

[fol. 70] [File endorsement omitted]

Endorsed on cover: File No. 39,166. Oregon, Supreme Court. Term No. 538. Harry Semler, Appellant, vs. Oregon State Board of Dental Examiners, L. A. Rosenthal, Leonard R. Andrews et al., etc. Filed November 23, 1934. File No. 538 O. T. 1934.